

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper)	DOCKET TV-091500
Carrier Classification of and Complaint)	
for Penalties against:)	ORDER 02
)	
GRANT E. FARRELL, d/b/a)	INITIAL ORDER CLASSIFYING
FARRELL MOVING COMPANY)	ACTIVITIES AS JURISDICTIONAL;
)	REQUIRING RESPONDENT TO
)	CEASE AND DESIST FROM
)	JURISDICTIONAL ACTIVITIES
)	WITHOUT A PERMIT;
)	SUSPENDING PENALTIES
.....)	

1 **SYNOPSIS:** *This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Washington Utilities and Transportation Commission (Commission) or allowed to become effective pursuant to the notice at the end of this Order. This Order determines that Grant E. Farrell, d/b/a Farrell Moving Company (Farrell Moving or Company) is engaged in business as a household goods carrier within the state of Washington without the authority required by RCW 81.80.070 and RCW 81.80.075. Farrell Moving is required to cease and desist from engaging in such business, without authority granted by the Commission. This Order finds four distinct violations of RCW 81.80.075, supporting a penalty assessment of \$5,000 for each violation, or \$20,000 in total. Because Farrell Moving has applied for, and the Commission has granted, a temporary permit allowing the Company to operate as a household goods carrier, this Order recommends the Commission suspend the effect of these penalties for one year, on condition that the Company remains in compliance with state laws and rules governing household goods moving companies, including maintaining the required insurance.*

SUMMARY

2 **NATURE OF PROCEEDING.** Docket TV-091500 involves a proceeding to determine whether Grant E. Farrell, d/b/a Farrell Moving Company (Farrell Moving or Company) should be classified as a household goods moving carrier subject to regulation under RCW 81.80 and whether the Commission should impose penalties

against the Company for advertising to provide household goods moving services without the required authority under RCW 81.80.075.

3 **APPEARANCES.** Grant E. Farrell, owner, Farrell Moving, Olympia, Washington, appeared *pro se* for the Company. Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, appeared for the Commission's Regulatory Staff.¹

4 **PROCEDURAL HISTORY.** On December 17, 2009, pursuant to RCW 81.04.510, the Commission entered Order 01 in this proceeding instituting a special proceeding on its own motion to determine whether Farrell Moving is engaging in business as a household goods carrier within the state of Washington without the authority required by RCW 81.80.070 and RCW 81.80.075. Order 01 also included the Commission's Complaint against Farrell Moving, seeking to impose penalties for violations of RCW 81.80.075, which prohibits advertising for moving services without authority. Together with Order 01, the Commission issued a *subpoena* and *subpoena duces tecum* in the proceeding, ordering Mr. Farrell and Farrell Moving to appear at the scheduled hearing and bring documents related to any moving services provided since July 26, 2009.

5 On January 15, 2010, the Commission conducted a duly noticed hearing in this docket. Mr. Farrell appeared and testified at the hearing and brought documents responsive to the *subpoena duces tecum*. Sheri Hoyt, a Compliance Investigator for the Commission, testified on behalf of Commission Staff.

6 On January 19, 2010, Mr. Farrell filed a completed application with the Commission for a household goods carrier permit.²

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See RCW 34.05.455.*

² The information in paragraphs 6 and 7 of this Order is posted on the Commission's Records Management System, and is publicly available on the Commission's Web site. The Commission takes official notice of these facts under WAC 480-07-495(2).

7 The Commission granted the application and issued temporary authority to Farrell Moving on January 22, 2010, in Docket TV-100110.

8 **DETERMINATION.** The Commission determines on the basis of the evidence presented at hearing that Farrell Moving is, and has been, engaging in business as a household goods carrier within the state of Washington without the authority required by RCW 81.80.070 and RCW 81.80.075. The Commission concludes it is appropriate to order Farrell Moving to cease and desist from this activity pursuant to RCW 81.04.510. In addition, the Commission determines that Farrell Moving should be penalized in the amount of \$5,000 for each of four violations of RCW 81.80.075 for advertising without required authority, for a total penalty of \$20,000. Given Mr. Farrell's stated intent to comply with requirements governing household goods movers and his recent efforts to obtain a permit from the Commission to provide services, the penalties are suspended on condition that Farrell Moving maintains an active household goods carrier permit for one year from the effective date of this Order.³

MEMORANDUM

A. Statutory Authority

9 Under RCW 81.80, the definition of "household goods carrier" includes a person who "advertises, solicits, offers, or enters into an agreement to transport household goods" within the state of Washington.⁴ The term "person" can mean a firm as well as an individual. Household goods carriers are common carriers. For the purposes of Title 81 RCW, every common carrier is a public service company.⁵ The Commission has jurisdiction to institute a special proceeding to determine whether a company or individual is conducting business as an intrastate mover of household goods requiring operating authority from the Commission, or has performed or is performing any act requiring Commission approval without securing such approval pursuant to RCW

³ If no party seeks administrative review of this Initial Order, the effective date of this Order will be the date the Commission issues a Notice of Finality in this docket.

⁴ RCW 81.80.010(5).

⁵ See RCW 81.04.010(11) and (16); *see also* RCW 81.80.010.

80.01.040, RCW 81.80.070 and RCW 81.04.510. The Commission is authorized to file a complaint on its own motion setting forth any act of omission by any public service company that violates any law or any order or rule of the Commission pursuant to RCW 81.04.110.

- 10 It is illegal to engage in business as a household goods carrier within the state of Washington without first obtaining a household goods carrier permit from the Commission. Under RCW 81.80.075(4), any person who engages in such business without the required permit is subject to a penalty of up to five thousand dollars per violation. If the basis for the violation is advertising, each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation.
- 11 When deciding the amount of the penalty to be ordered for engaging in business as a household goods carrier without a household goods carrier permit, the Commission must consider (1) the carrier's willingness to comply with the requirements of RCW 81.80.070 and the Commission's household goods carrier rules; and (2) the carrier's history of compliance with the provisions of RCW 81.80.075.⁶
- 12 In this proceeding, the Commission must determine:
1. Whether Farrell Moving is or has engaged in business as a household goods carrier in the state of Washington without the required permit; and
 2. If it determines Farrell Moving has engaged in jurisdictional activities without legal authority, whether to order the Company to cease and desist from such activities, whether to assess penalties against the Company and, if so, in what amount.

B. Evidence

- 13 The Commission became aware of Farrell Moving's operations in April 2009, after a Commission employee saw an advertisement for Mr. Farrell's moving services.⁷ On April 5, 2009, Ms. Hoyt was assigned to investigate whether the Company was

⁶ See RCW 81.80.075(4)(b).

⁷ Hoyt, TR. 22:12-17.

authorized to provide household goods moving services. Ms. Hoyt documented her investigation in a memorandum and declaration.⁸

- 14 During her investigation, Ms. Hoyt determined that the Company had posted an advertisement on seattle.craigslist.org (Craigslist) on April 5, 2009, for household goods moving services.⁹ Ms. Hoyt also determined that the Company had advertised for such services on its own Web site, www.farrellmoving.com, and several other Internet Web sites.¹⁰
- 15 As a result of this initial investigation, the Commission sent Mr. Farrell a letter on April 14, 2009, informing him that it had information that he was operating as a household goods carrier without the required permit, directing him to cease and desist operations, identifying the consequences of noncompliance, and attaching copies of the applicable laws and rules.¹¹
- 16 Mr. Farrell contacted Ms. Hoyt by telephone on April 16, 2009, and again on April 17, 2009, inquiring how to come into compliance. Ms. Hoyt provided technical assistance concerning how to file an application for a permit and the requirements, as well as the consequences, of advertising without a permit under a new law that would become effective on July 26, 2009.¹²
- 17 Ms. Hoyt identified a Craigslist advertisement for Farrell Moving on April 28, 2009, offering household goods moving services.¹³

⁸ *Id.*, TR. 22:20 – 23:13; *see also* Exh. No. 3.

⁹ Exh. No. 3, at 1, 6 (Att. A).

¹⁰ *Id.*, at 2, 7-14 (Atts. B, C).

¹¹ *Id.*, at 2, 15-18 (Att. D).

¹² Hoyt, TR. 31: 2-16; Exh. No. 3 at 3-4. The new law - Laws of 2009, c.94 – is codified in RCW 81.80.010, RCW 81.80.040, RCW 81.80.070, RCW 81.80.075, RCW 81.80.280, RCW 81.80.357, and RCW 81.80.372.

¹³ Exh. No. 3 at 4 (Att. E).

- 18 On July 15, 2009, the Commission sent another letter to Mr. Farrell informing him again of the new law and changes in the law that would allow the Commission to pursue enforcement actions against non-permitted carriers based only on proof of advertising.¹⁴ The letter also invited the Company to avoid enforcement action by filing an application prior to August 15, 2009.
- 19 After July 26, 2009, the effective date of the new law, Ms. Hoyt determined that Farrell Moving continued to advertise for household goods moving services on its own Web site, Craigslist and other Internet sites.¹⁵
- 20 Prior to completing her investigation, Ms. Hoyt confirmed with other Staff that the Commission had not received a household goods carrier permit application from Mr. Farrell or Farrell Moving.¹⁶
- 21 After completing her investigation report and declaration on October 19, 2009, and in preparation for the hearing, Ms. Hoyt checked the Company's Web site on January 11, 2010, and found the domain name but no operating Web site.¹⁷ Ms. Hoyt also checked other online advertising and identified two postings for Farrell Moving on Craigslist: one from January 8, 2010, and another from January 9, 2010.¹⁸ These advertisements clearly offered household goods moving services:

My company offers the most professional, inexpensive way to move.
We can move you with our truck, or with yours. ...¹⁹

MOVING? FAST, PROFESSIONAL, INTEGRITY, CHEAP
(Pierce/Thurston)²⁰

¹⁴ *Id.*, at 4-5, 20-21 (Att. F).

¹⁵ *Id.*, at 5, 22-30 (Atts. G-J).

¹⁶ *Id.*, at 5.

¹⁷ Hoyt, TR. 26:7-9; *see also* Exh. No. 4.

¹⁸ Hoyt, TR. 31:18 – 32:3.

¹⁹ Exh. No. 5.

²⁰ Exh. No. 6.

***MOVING? FARRELL MOVING CO. MEET [sic] OR BEAT
ANY RATE*** (Thurston and surrounding areas)²¹

22 At hearing, Mr. Farrell admitted that he is a household goods carrier, that he has operated without a permit and continues to do so, that he has his own Web site, and that he has advertised on Craigslist.²² Mr. Farrell admitted that he posts advertisements to Craigslist every 48 hours.²³ Mr. Farrell started advertising and providing pack and load services beginning in 2007.²⁴ He also worked for other moving companies, including Bekins, but was fired for conflict of interest when the company found he was also providing his own moving services.²⁵ Mr. Farrell began providing full service household goods moves in the summer of 2008 and obtained his own truck in March 2009.²⁶

23 Mr. Farrell wants to bring his operations into compliance. He has not done so before due to the costs of the application and the insurance, but is prepared to do so now.²⁷ Mr. Farrell provided evidence of liability insurance,²⁸ as well as a business license and Unified Business Identification number from the state Department of Licensing.²⁹

24 At the conclusion of the hearing, Commission Staff recommended that the Commission classify Farrell Moving as a household goods carrier and enter an order requiring the Company to cease and desist from continued operations without a

²¹ Exh. No. 7.

²² Farrell, TR. 7:19-24; 14:20-25.

²³ *Id.*, TR. 33:1-2.

²⁴ *Id.*, TR. 10:5-7.

²⁵ *Id.*, TR. 10:7-24.

²⁶ *Id.*, TR. 13:18 – 14:17.

²⁷ *Id.*, TR. 7:25 – 8:25; 17:8-16; 18:10-14.

²⁸ Exh. No. 1.

²⁹ Exh. No. 2.

permit.³⁰ Staff also requested that the Commission impose the maximum penalty of \$5,000 for each violation of RCW 81.80.075 for engaging in business as a household goods carrier without a permit.³¹ Noting evidence of a Web site, two Craigslist.com advertisements, and one Internet advertisement, Staff requests total penalties of \$20,000. However, Staff recommends the Commission suspend the penalties for one year, on the condition that Farrell Moving complete an application for a permit with the necessary insurance by January 22, 2010, at 5:00 p.m., and the Company maintains the necessary insurance and an active permit, *i.e.*, not lose the permit or the insurance, for one year.³²

25 Mr. Farrell agreed to these conditions, with the understanding that he or the Company cannot provide any moving services from the day of the hearing until the Commission issues the Company a permit.³³

26 Following the hearing, Mr. Farrell met the first condition for suspended penalties, filing a completed application with the Commission by the close of business on January 22, 2010. The Commission issued the Company a temporary permit, THG-63811, on January 22, 2010.³⁴

C. Discussion and Determinations

27 There is no dispute based on the evidence in this proceeding that Mr. Farrell and Farrell Moving have operated since April 2009, and continue to operate, as a household goods carrier without a permit in the state of Washington in violation of RCW 81.80.075. Staff has documented, and Mr. Farrell admits, that he has advertised to provide household goods moving services since July 26, 2009. As a result, Farrell Moving meets the definition of a household goods carrier under RCW 81.80.010(5). Further, the Commission has not granted Mr. Farrell or Farrell Moving

³⁰ Cameron-Rulkowski, TR. 38:19 – 39:12.

³¹ *Id.*, TR. 39:13-20.

³² *Id.*, TR. 40:3-13, 18-25.

³³ Farrell, TR. 41:7-17.

³⁴ *See* Docket TV-100110.

a household goods carrier permit. Based on these findings and the Commission's authority under RCW 81.04.510, Farrell Moving should be classified as a household goods carrier subject to the provisions of Title 81 RCW, and the Commission should issue an order directing Farrell Moving to cease and desist operations as a household goods carrier in the state of Washington without a permit.

28 In addition to determining that Farrell Moving either conduct its business in accordance with the law or not at all, the Commission determines further that it should penalize the Company for its unlawful activities. Staff has brought forth evidence of at least four violations of RCW 81.80.075, each of which carries a potential penalty of up to \$5,000. Considering Farrell Moving's history of non-compliance, its knowledge of the requirements under state law and its failure to take seriously its obligations under the law until the Commission filed the complaint in this proceeding, the Commission determines it should assess the maximum total penalty of \$20,000. However, given the Company's recent efforts to bring itself into compliance, including completing a permit application and providing proof of insurance within a week of the hearing, it is appropriate to grant Staff's request to suspend imposition of the penalty for one full year from the effective date of this order, on condition that the Company maintain an active permit and the insurance required under RCW 81.80.190, WAC 480-15-530 and WAC 480-15-550, for that year. By suspending the penalties, the Commission does not condone Mr. Farrell's prior non-compliance, but seeks to encourage continued compliance now that Mr. Farrell has obtained a household goods permit.

29 At the end of one calendar year from the effective date of this Order, Commission Staff shall notify the Commission by letter to this Docket whether Farrell Moving continues to maintain an active permit. If so, the suspended penalties shall be cancelled. If Commission Staff becomes aware at any time during the one year period that the Company is no longer maintaining an active permit, including maintaining the required insurance, Staff shall notify the Commission in this Docket and the Commission will issue an order imposing the full penalty amount of \$20,000.³⁵

³⁵ Of course, Farrell Moving is required to continue to maintain its active permit and the required insurance *after* the one year period if the Company continues performing household goods moves in Washington. The one year period discussed herein is in the context of the Commission's

FINDINGS OF FACT

30 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

- 31 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including household goods carriers, under the provisions of Title 81 RCW.
- 32 (2) Grant E. Farrell, d/b/a Farrell Moving Company is registered to do business in the state of Washington. Farrell Moving has engaged in business as a household goods carrier within the state of Washington without the authority required by RCW 81.80.070 and RCW 81.80.075.
- 33 (3) Farrell Moving has advertised to provide household goods moving services on its Web site www.farrellmoving.com, on Craigslist, and on other Internet Web sites on at least four instances since July 26, 2009.
- 34 (4) The Commission has notified Farrell Moving twice by letter and several other times by telephone of the statutory requirement that the company may only provide household goods moving services or advertise for such services if the Commission has granted it a household goods carrier permit.
- 35 (5) Farrell Moving filed a completed application for a household goods permit with the Commission on January 19, 2010, and the Commission granted the Company a temporary permit on January 22, 2010.

suspension of the penalties and does not alter the statutory and regulatory requirements that apply to Farrell Moving and all other common carriers.

CONCLUSIONS OF LAW

- 36 Having discussed above all matters material to this decision, and having stated
detailed findings, conclusions, and the reasons therefore, the Commission now makes
the following summary conclusions of law, incorporating by reference pertinent
portions of the preceding detailed conclusions:
- 37 (1) The Washington Utilities and Transportation Commission has jurisdiction over
the subject matter of, and parties to, these proceedings.
- 38 (2) Farrell Moving is engaged in business as a household goods carrier within the
state of Washington without the authority required by RCW 81.80.070 and
RCW 81.80.075.
- 39 (3) Farrell Moving should be ordered pursuant to RCW 80.04.510 to cease and
desist from engaging in business as a household goods carrier within the state
of Washington without the authority required by RCW 81.80.070 and RCW
81.80.075.
- 40 (4) Farrell Moving's advertisement on the Company's Internet Web site on
September 24, 2009, to provide household goods moving services constitutes
one violation of RCW 81.80.075. The Commission should assess the
maximum penalty for this violation, \$5,000.
- 41 (5) Farrell Moving's advertisements on Craigslist on September 24, 2009, and
October 1, 2009, to provide household goods moving services constitute two
violations of RCW 81.80.075. The Commission should assess the maximum
penalties for each of these violations, \$5,000, for a total of \$10,000.
- 42 (6) Farrell Moving's advertisement on www.city-data.com on September 24,
2009, to provide household goods moving services constitutes one violation of
RCW 81.80.075. The Commission should assess the maximum penalty for
this violation, \$5,000.
- 43 (7) Farrell Moving's efforts to come into compliance with the requirements for
household goods carriers by filing a permit application, obtaining the
necessary insurance and obtaining a valid permit support mitigating the effect

of penalties for noncompliance by suspending the penalties on the condition that the Company maintain the necessary insurance required under RCW 81.80.190, WAC 480-15-530 and WAC 480-15-550, and maintain its Commission authority for one calendar year after the effective date of this Order.

ORDER

THE COMMISSION ORDERS THAT:

- 44 (1) Grant E. Farrell, d/b/a Farrell Moving Company is required, pursuant to RCW 80.04.510, to cease and desist from engaging in business as a household goods carrier within the state of Washington without the authority required by RCW 81.80.070 and RCW 81.80.075.
- 45 (2) It is appropriate to assess penalties against Farrell Moving in the total amount of \$20,000 for four violations of RCW 81.80.075, each of which carries a maximum penalty of \$5,000. The full penalty amount of \$20,000 is suspended for one calendar year from the effective date of this Order, on the condition that Farrell Moving maintain the necessary insurance required under RCW 81.80.190, WAC 480-15-530 and WAC 480-15-550, and that the company maintain its permit for the full calendar year. If this condition is not met, Staff shall notify the Commission in this Docket and the Commission will issue an order imposing the full penalty amount of \$20,000.
- 46 (3) The Commission retains jurisdiction to enforce this Order.

DATED at Olympia, Washington, and effective February 5, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order, any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such an answer.

RCW 80.01.060(3) provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion. You will be notified if this order becomes final.

In addition, WAC 480-07-450(2) provides that a party who is found in default may contest the order of default by filing a written motion with the Commission within ten days after service of the Final Order. A dismissed party or party found in default may request that the order be vacated and, if the order is dispositive of the proceeding, that the proceeding be reopened for further process.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and (8) copies of any Petition or Answer must be filed by mail delivery to:

Attn: David Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 S Evergreen Park Drive, SW
Olympia, WA 98504-7250